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ABSTRACT

This is a summary and review by the Federation for American Immigration Reform (FAIR) of the report to Congress on March 1, 1981, of the Select Commission on Immigration and Refugee Policy. The Commission's recommendations on aspects of illegal immigration, including enforcement and the hiring of immigrants, are summarized and examined. The Commission's recommendations regarding legal immigration, which covered quotas, preference systems, refugees and mass asylum, and amnesty, are also discussed. The paper concludes with an analysis of impending immigration legislation. (APM)

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The SCIRP Report:

A Retrospective

by Roger Conner and
Lindsey Grant

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THE SCIRP REPORT: A RETROSPECTIVE

by

Roger Conner* and
Lindsey Grant**

I. INTRODUCTION

On October 5, 1978, President Carter signed into law a bill creating a Select Commission on Immigration and Refugee policy. The charge began thus:

> conduct a study and analysis of the effect of the provisions of the Immigration and Naturalization Act (INA) on (A) social, economic and political conditions in the United States; (B) demographic trends; (C) present and projected unemployment in the United States; and (D) the conduct of foreign policy....

The Commission reported to Congress on March 1, 1981. Three important conclusions emerge from a close reading of the Report, the Executive Summary, and Father Hesburgh's Introduction: Immigration to this country is "out of control"; "what is a serious problem today could become a monumental crisis as migration pressures increase"; and the American people are frustrated and angry, ready to demand radical measures unless their government responds. I have been asked to give FAIR's evaluation of how well the Commission responded to the challenge which those conclusions represent.

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Let us preface our comments by recognizing that any Commission created to make findings and recommendations on immigration policy has been handed a difficult task indeed. People have strong visceral reactions, one way or the other. Beyond emotions, there are the interest groups: Employers who need illegals to survive, welfare groups whose very existence depends on a continuous flow of refugees, unions, population groups, and an endless list beyond (in which we must include FAIR).

Beyond the groups, there are broader and more fundamental issues of national interest. How much does immigration exacerbate the present unemployment problem, particularly among the poor and the young? What will it do over time to the balance between population and resources in the United States? to the availability of farmland, the production of food for us and for export? There are plenty of theories about these impacts, coupled with a shortage of hard evidence. The report of any Commission, in such a morass, would be contentious.

Perhaps the very diversity of the Commission complicated any hope of a detailed response to these important questions. What the Commission report does is three things: First, it conducts a detailed study of existing law and comes to the conclusion that most of that law should be left intact; second, it proposes to remove the lure of jobs by making it effectively illegal to hire illegal immigrants, along with increased law enforcement; and, third, it calls for substantial increases in legal immigration along with a broad amnesty for illegal immigrants already in the

country.

Although the policy recommendations are laced with cryptic comments on the larger questions to which I referred a moment ago, the recommendations themselves are far more detailed than the substantive analysis of their social and economic implications.

In the Commission's words, its proposals would "close the back door" while they "open the front door a little more..." FAIR's reaction is that a better case exists for reducing than for increasing immigration. We applaud the proposals to "close the back door" but are concerned about their prospects for being put into practice; we oppose tinkering with the "front door" until we see whether the back door has really been closed and until we have a better idea as to how many are in the house, and how many more are coming.

Let us comment on the principal proposals, grouping them according to the "door" they affect.

To take the "back door" first:

II. ILLEGAL IMMIGRATION

A. Enforcement

The Commission recommended that "the law be firmly and consistently enforced against US citizens who aid aliens who do not have valid visas to enter the country."

FAIR finds this statement more meaningful than it may first appear. It is an oblique criticism of the Carter administration's vacillation as to whether to enforce the law, which contributed to the Cuban influx of 1980. Certainly, a clear statement of the

Government's intention to enforce the law, -- impose fines, and to seize vehicles and vessels used in importing illegal aliens -- is a first step to discourage the casual flouting of the law.

The Commission also urged that the Immigration and Naturalization Service (INS) be beefed up and improved. FAIR agrees with the sentiment but wishes that the recommendation had been more forceful and more detailed. A year ago, the New York Times characterized U.S. immigration policy as a "wink" at illegal immigration. We have laws, but starve the enforcement agencies so that the laws will not be enforceable. The Border Patrol is spread unbelievably thin. It attempts to monitor some 6000 miles of land frontier with some 350 men on patrol at any given time. Now, the new Administration, pursuing its budgetary goals, has proposed to Congress that INS absorb 44% of the Department of Justice's forthcoming budget cut. If the intent is to insure the vitiation of US immigration law, we are well on the way.

To begin the process of saying more precisely what is needed, let us offer the following estimates. Last year, at FAIR's suggestion, the Border Patrol Supervisors Association surveyed the individual sector chiefs and came up with the estimate that the Patrol could apprehend about 90% of illegal border crossers, instead of the present approximate 33 to 55%, if its total manpower somewhat more than doubled, to 5500, and its budget were increased by $122 million. This is at least an informed guess as to how much it would cost to deal with part of the problem. It is not an overall total. The Coast Guard should be asked what it

needs to maintain its sea patrol. We also need improved control of non-immigrants and better internal surveillance to apprehend illegal immigrants who have gotten past the border area, and INS itself desperately needs a thorough administrative overhaul.

It is not presently very popular to argue against any budget cuts, but let me warn that some cuts can be directly destructive to the budget itself. Aside from all the social costs of illegal immigration, let me cite one budgetary figure: The Congressional Budget Office has recently computed the budgetary cost in direct transfer payments, for every unemployed worker at $7000 to $9000 per year. If one million workers are displaced by illegal immigrants, that is 7 to 9 billion dollars; and one million is an extremely low guess as to the total current displacement of American workers by illegals.

B. Fair Hiring (nee Employer Sanctions)

The Commission recommended that it be made illegal for employers to hire "undocumented workers" (i.e. illegal aliens and non-immigrants not permitted to work here). It also recommended "some system of more secure identification" to determine who is eligible to work.

FAIR strongly endorses both recommendations. Every serious student of this issue agrees that there is no way to stop illegal immigration unless you remove the access of illegal immigrants to employment. The "Texas proviso" must be repealed, so that employers are legally prohibited from hiring illegal immigrants. Heretofore such proposals have died in the withering cross-fire of

ethnic groups who fear discrimination from employers who can't tell their status, employers who fear unfair prosecution if they unwittingly hire an illegal, and civil libertarians who fear that any form of worker identification will create unstoppable momentum toward a police state.

These interests were more than amply represented on the Commission, which makes the Solomon-like resolution of the issue in the Report all the more remarkable: A worker identification system of some kind, perhaps functioning like the ubiquitous call-in system used by American Express and Visa, contains fewer hazards than the alternative of continuing illegal immigration.

That this particular Commission, given its make-up, could reach to such a conclusion suggests that a shift in informed opinion of rather dramatic proportions has occurred among opinion leaders in the past five years or so. The response in the press confirms my hunch: The Washington Post editorial writers reluctantly observed that some kind of identification seemed inevitable, and the New York Times editorial called worker identification "The Missing Nail."

We are glad to report that a start has been made with the introduction of the Immigration and National Security Act of 1981 by Senator Walter D. Huddleston and seven others in the Senate (S.776) and by Representatives Robin Beard (R-Tenn) and Tony Coelho (D-CA) in the House (H.R.2782).

The Commission also made some potentially helpful recommendations to improve the judicial review process and control

the endless litigation by aliens threatened with deportation, which I will not try to cover here.

Let me turn to the "front door."

II. LEGAL IMMIGRATION

A. Immigration Quotas

The Commission's public statement is that it recommended "a total limited immigration number of 350,000 per year", plus 100,00 per year for five years "to reduce backlogs."

FAIR finds this statement thoroughly misleading. There is in fact no overall "total" at all; the Commission decided not to set one. The 450,000 (for the first five years) includes only those classes of immigrants subject to numerical limitation. As to these, the Commission proposal constitutes a 66% increase over the present law for the next five years. Refugees, ministers and certain family members of American citizens would enter above these quotas. In 1980, immigration totalled over 808,000, not counting illegal immigrants. Had the Commission's recommendation been in effect that year, legal immigration would have exceeded 980,000, and this figure does not include the millions who will be admitted later as immediate relatives of newly naturalized citizens.

FAIR and others (including one Commission member) have proposed that a ceiling total on total immigration should be set in light of the nation's absorptive capacity, so that any future increases in one category would be balanced by decreases in

another. Only in that way will the Government be forced to balance priorities rather than yielding to one pressure group after another.

We observed earlier that the American public is impatient with what it perceives as a failure of their political leaders on immigration. Recent public opinion polls back up the point. A Roper Poll on June 18, 1980 asked whether 400,000 legal immigrants a year would be too many. 80% said yes. A Gallup Poll reported in Newsweek May 26, 1980 found 65% in agreement with the statement that all immigration should be halted until unemployment drops below 5%.

These findings are subject to the usual criticisms of public opinion polls. But, since the Commission staff itself rejected the idea of conducting a careful study of public opinion, the existing polls are all the information we have. And the conclusion is inescapable that the Commission simply ignored the overwhelming desire of the American people that legal immigration should be reduced rather than expanded.

This is all the more remarkable when you consider the cursory analysis within the document of the substantive arguments for increasing or decreasing immigration. The Commission concedes that hard evidence is lacking on which one could reject out of hand the conclusion reached by the American people. In essence, the Commission says that the American people are wrong, but does not feel compelled to present a convincing case as to why.

FAiR believes that the Commission moved the wrong direction on

numbers. The proposal in the Immigration and National Security Act mentioned earlier -- 350,000 -- is far more realistic. I shall not repeat in this context the rationale for a lower level which we have developed elsewhere. Suffice it to say that a time of high unemployment, energy uncertainty, and growing public resentment of immigration is hardly the time to propose an increase in the numbers.

B. Immigration Preferences

The Commission reviewed the current preference system exhaustively and wound up endorsing most of it. It recommended a separate quota for "independent" immigrants, and assigned most of the proposed increase in quota numbers to it. Perhaps the most important decision was a negative one: to keep the present preference for brothers and sisters of American citizens. The staff had recommended its abolition. Another loophole in the ceiling is created by exempting adult unmarried children and grandparents of Americans from numerical limitation.

FAIR believes that priority should be given to immediate nuclear family members of American citizens and legal immigrants, but not to brothers and sisters. The "fifth preference" given to brothers and sisters in the present law is the key to "immigration chains" which multiply the number of actual immigrants for each quota immigrant admitted. An immigrant is naturalized and brings his siblings in under that preference; they in turn bring in their spouses under second preference, who in time are naturalized and bring in their parents and siblings. And so on. "Family

unification" is an appealing slogan, but the admission of married siblings of American citizens actually tears apart the family of the spouse, and the very process of migration must mean separation from somebody.

C. Refugees and Mass Asylum

The Commission decided to endorse the Refugee Act of 1980 and the way it has been administered. A minority opposed such a sweeping endorsement and pressed particularly for reform in the present provisions which give the President unlimited authority to bring in refugees after mere consultation with the appropriate Congressional committees. The minority wanted closer Congressional surveillance and a new look at the definitions and standards used.

On mass arrival of asylum claimants (such as the Cuban influx last spring), the staff concluded that such influxes will occur again. It focussed on measures to accommodate such movements, not on measures to prevent them. The Commission called for an interagency coordinating system, contingency planning for handling such movements, planning for processing centers, and various proposals to help evaluate and adjudicate asylum claims. It did not offer any guidance as to how to deport illegal entrants when (as in the case of Cuba) their home countries will not take them back.

FAIR believes (as did at least one of the Commissioners) that the Commission here approached some of the really critical issues and backed away. Congress in 1980 raised the annual refugee

figure from 17,400 to 50,000. Within the month, using an escape clause in the law, the President decided to bring in 232,000. He later regularized another 125,000 Cuban and 24,000 Haitian illegal entrants as "special entrants." For FY 1981, with a cursory explanation to Congress, the Government set a target of 217,000. The Commission is simply abdicating its responsibility when it fails to address the impact of such a breathtaking acceleration of refugee intake or to take on the questions of how to forestall or deal with the new phenomenon of mass, covert illegal influxes into the U.S.

FAIR does not oppose a 50,000 quota for refugees, and it believes that the President should have the authority to raise that total in emergency situations, but only within the total immigration ceiling by reducing other categories.

FAIR believes that Congress should not delegate its authority over immigration level to the President and believes that possitive expression of Congress's will should be a requirement for any raising of the annual refugee and immigration quotas it sets.

D. Amnesty

The Commission proposed "legalization of undocumented aliens" in the United States as of January 1, 1980. It said that such an amnesty should only follow the development of effective controls on illegal immigration, but it left the details to Congress.

FAIR believes the proposal is premature. The Commission proposes to legalize a class without even a rough idea of the

numbers or costs involved. Directly, this proposal would add millions to the permanent U.S. population. (The Commission's own very conservative figures suggest a range of 1.5 to 3.6 million.) Moreover, it would permit additional millions of family members to enter as non-quota immigrants once the illegal aliens are legalized and can obtain citizenship. Unless future illegal immigration is under control --and the Commissions's recommendations hardly assure such control--the process will generate further illegal immigration...and future amnesties. One of my associates has already been asked, in behalf of an Iranian ex-student, how deportation can be stayed until the amnesty comes into force.

We believe that amnesty can only be the last step, after the dimensions of the problem are known, after effective immigration controls are in place, and when case-by-case criteria have been established to decide when illegal aliens should be offered amnesty.

III. WHAT NEXT

The Heritage Foundation, one of Washington's new conservative "think tanks", published a book entitled Mandate for Leadership just after the election. It is an agency-by-agency, issue-by-issue description of what the Reagan administration should do. When they reach immigration, the otherwise self-confident authors pause: "There is no clear 'conservative' position on immigration, and no clear 'conservative' solution." So, it is not surprising that, President Reagan's first act on

immigration policy was precisely what Presidents Ford and Carter had done before him: He appointed a committee to study the issue.

However, rather than reporting at the end of his administration (as in Ford's Domestic Policy Council), or two years into his term (as in Carter's Interagency Task Force), the Committee is to report back in three months, by May 1. This change of pace illustrates the best single thing about the Commission's work: It is over.

I do not mean this in any pejorative sense. It is just that the most creative minds in Congress and the administration will be hard pressed to come up with another mechanism by which this cup may pass from them. The studying has been done. The hoped for "conflict free" solution has not been found. The situation is deteriorating rather than improving. And there is nothing on the horizon to suggest that we will know more about "solutions" in two years or four than we do now (though I hope our friends in the research establishments and universities will continue their work). At this stage, calls for more study prior to Congressional action would be a pretense for inaction.

While we do not know the entire answer, we do know where to start. And a handful of members of Congress, led by Senator Walter D. Huddleston of Kentucky, have introduced The Immigration and National Security Act (INS Act) of 1981 (S. 776, H.R. 2782). They will doubtless be subject to endless criticism, as it is always easier to tilt at windmills than it is to build new ones. But the bill will serve as an outline for the emerging

congressional debate to "close the back door", it includes a combination of Fair Hiring procedures, worker identification, and increased enforcement. And it is designed to return the "front door" to a semblance of rationality and order by setting an all-inclusive ceiling on total immigration into the country of 350,000. This is not to say that more could not be admitted in future years, but that a future President would have to persuade the Congress to increase the level rather than adding hundreds of thousands to our population by the stroke of a pen.

As Congress evaluates this legislation and the other proposals which will emerge from the Commission's work, we hope that it will have in mind the penetrating analysis contained in the extended remarks of Senator Alan K. Simpson (R-Wyo):

> Should the United States immigration and refugee policy be evaluated by the national interest standard of what best promotes the welfare of the majority of Americans and their descendants? Or by the humanitarian standard of what best promotes the welfare of those persons living abroad who are less fortunate than most American citizens. . . (or of) a relatively few individuals living in America who wish to bring to this country relatives living abroad?

What is at stake in this debate is nothing less than the quality of life which our children will enjoy. It will accomplish little if we sacrifice their future for unlimited immigration today, for as the Commission so rightly concluded we cannot solve the world's overpopulation, underdevelopment, and refugee problems through migration. Paradoxically, the long range interests of people in the source countries would be better served by the adoption of the INS Act than by the status quo. For migration to the U.S. frequently consists of the most ambitious, the trained

people from the sending countries. And, to the extent that elites in source countries consider migration an "escape valve", either for their troubled masses or themselves, it can only reduce pressures for needed social and economic reforms which address the fundamental problems which they face.

Every decade an issue emerges to test the very basic ideals of our country. The Vietnam War, the environment, civil rights were such issues. Immigration may well be the issue through which we

redefine ourselves as a people in the age of limits. In a sense, the Commission report is a signal that this debate, now long overdue, is about to commence. May the best ideas win.